



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

## 1995 Annual Report





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# Introduction

The Law Society of Upper Canada was founded in 1797 and incorporated in 1822 as the governing body of Ontario's lawyers. It is responsible for their education, licensing, supervision and discipline.

The Society's affairs are conducted by forty-four governors known as Benchers, forty of whom are elected by members of the legal profession every four years, four of whom are members of the lay public and are appointed by the Lieutenant Governor-in-Council. In addition, there are also several ex-officio Benchers.

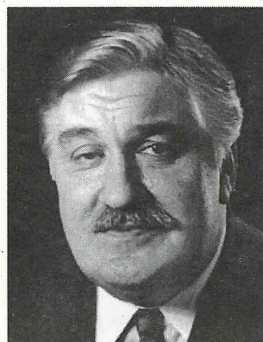
The Society's mission statement is as follows:

*The Law Society of Upper Canada exists to govern the legal profession in the public interest by:*

- *ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and*
- *upholding the independence, integrity and honour of the legal profession; for the purpose of advancing the cause of justice and the rule of law.*



# Treasurer's Message



Paul Lamek, Q.C.

It is somewhat artificial to be writing this message in the Fall of the year when so much has happened since the Society's year end and since the expiry of my term as Treasurer. Events have certainly not stood still in the past six months and crises continue to demand the Society's urgent attention and creative consideration. With all my heart I wish my successor, Susan Elliott, and the current Benchers well and I have every confidence – which I know is shared by the profession as a whole – that she and they will guide the Society with wisdom and courage to solutions to the problems that bedevil us.

When I left office, the Law Society continued to wrestle with the two main issues that had commanded our attention for over a year: errors and omissions insurance and legal aid.

With respect to insurance, last year saw the report of the Task Force, chaired by Harvey Strosberg, which had laboured diligently over the Summer to identify the causes of the crisis and to propose solutions. The Report and the recommendations for remedial action did not meet with universal approval but the need for their adoption was evident, with the clear understanding and undertaking that the development and refinement of a new, more equitable, risk-based programme was a first and ongoing priority in which the profession had to be involved.

Perhaps the single most important step towards the solution of the insurance problem was the transfer of responsibility for the programme to the Society's subsidiary, the Lawyers' Professional Indemnity Company (LPIC). Under the leadership of its President, Malcolm Heins, LPIC set about to implement the recommendations of the Strosberg Task Force. In the result, the combined Errors and Omissions Insurance Fund deficit has been reduced by more than \$28 million and the programme is operating effectively on a business basis. In my view, all those associated with the change in direction and the renewal of LPIC – the Chair and Board of Directors, the staff, and Convocation – deserve the thanks of the profession and are to be congratulated on the success of their efforts on our behalf.

Legal aid was, and continues to be, a less happy story. During the Summer of 1994, Stephen Goudge, the then newly-appointed Chair of the Legal Aid Committee, and Paul Copeland, a Vice-Chair of the Committee, with the assistance of Bob Holden, the Provincial Director of the Ontario Legal Aid Plan, succeeded in negotiating with the Ministry of the Attorney-General a Memorandum of Understanding (MOU), establishing funding levels for four years into the future, which would permit long-term management of the Plan. At that point, there was every reason to be optimistic about the future of the legal aid programme in Ontario.

Unfortunately, it was already evident by the Spring of this year that the Plan was on a



course to experience a very substantial deficit by the end of its current financial year. Unprecedented and unforeseeable increases in the number and average size of accounts submitted to the Plan had combined to make unattainable the funding levels set in the MOU. In consequence, the Benchers who were elected in the Spring and my successor who took office at the end of June, inherited a problem of horrendous proportions affecting thousands of members of our profession and hundreds of thousands of our fellow citizens. They have, by their energetic and responsible approach to the problem, earned and are entitled to the undivided support of all of us.

On other fronts, improvements were made to the Society's effectiveness in dealing with matters before the Discipline Committee and Convocation and it is interesting to note the complaints received about lawyers were down by about five per cent from the previous two years.

Following the adoption of Rule 28 (non-discrimination) in September, 1994, the Law Society has achieved considerable progress in developing materials for the profession to assist them to understand their obligations under Rule 28.

I remain encouraged by the Society's ability to respond to challenges facing the profession and society at large. The non-existent economic recovery has left some difficult challenges for members of the profession, along with the justice system, but I believe the Society is well positioned to deal with the task ahead.

I cannot end this message without expressing my sincere thanks to the Society for permitting me to serve as Treasurer for the past two years. No higher honour can be given to any member of our profession and I am truly grateful. I express my thanks also to the members of Convocation for their support and industry in what were very difficult times and to the senior management and the entire staff of the Society. The Society is very well served by the dedication and hard work of both Benchers and staff and on behalf of the entire profession I thank them most warmly and sincerely.





# Membership Statistics

## Members in good standing (as at June 30, 1995)

### Members in private practice in Ontario :

Sole Practitioners	5,774	
Partners	6,328	
Employees	2,104	
Associates	2,214	16,420

### Members otherwise employed in Ontario :

Education	259	
Government	2,511	
Other employment	3,580	6,350

### Members not employed in Ontario :

Retired	2,558	
Residing out of province	1,712	
Ill Members	56	4,326

Total Members in Good Standing	27,096
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### Other membership data

Honorary members	16
Life members	366
Members excused fees	731

## Admissions and total membership (10-year history)

Year	Admissions				Total Admissions	Total Members
	Male	%	Female	%		
1986	691	62.2	420	37.8	1,111	18,588
1987	672	59.0	467	41.0	1,139	19,442
1988	672	57.3	501	42.7	1,173	20,417
1989	691	58.4	492	41.6	1,183	21,477
1990	735	60.1	487	39.9	1,222	22,501
1991	701	58.6	495	41.4	1,196	23,469
1992	703	58.1	506	41.9	1,209	24,432
1993	646	55.0	530	45.0	1,176	25,425
1994	643	53.5	558	46.5	1,201	26,307
1995	611	52.0	563	48.0	1,174	27,096



## Memberships, 1995 and 1994

	<u>1995</u>		<u>1994</u>	
	Number	%	Number	%
Male	19,686	72.7	19,382	73.7
Female	7,410	27.3	6,925	26.3
Total	27,096	100.0	26,307	100.0

## Membership, by age range and sex, 1995

Age Range			<u>Per cent</u>	
	Male	Female	Male	Female
Under 30	848	870	49	51
30-39	5,785	3,794	60	40
40-49	6,842	2,216	76	24
50-65	4,465	469	84	16
Over 65	1,746	61	97	3
Total	19,686	7,410	72.7	27.3

## Membership geographical distribution, 1995

	<u>Fee paying</u>		<u>Life</u>		<u>Excused Fee</u>		<u>Total</u>	
	Male	Female	Male	Female	Male	Female	Male	Female
Toronto	8,968	3,917	192	14	292	23	9,452	3,954
Other Ont.	8,469	2,879	213	7	388	22	9,070	2,908
Other Prov.	710	328	9	0	41	3	760	331
Outside Can	384	214	5	0	15	3	404	217
Total	18,531	7,338	419	21	736	51	19,686	7,410

# Committee Reports

## Admissions and Membership

Chair: Colin L. Campbell, Q.C.

### Applications to Transfer

Twenty-eight (28) applications were received in fiscal 1995 from members in other Canadian provinces requesting a transfer to practice in Ontario. The particulars are as follows:

Alberta	4
Manitoba	8
New Brunswick	1
Newfoundland	1
Quebec	12
Saskatchewan	2
	28

### Calls and Admissions

Under Section 4 of Regulation 708, which governs the transfer to practice in Ontario of members of other Canadian provinces, 19 applicants were called to the bar and admitted as solicitors.

Under Section 5, which governs the admission of full-time deans and teachers in Ontario law schools, four applicants were called to the bar and admitted as solicitors.

Under Section 6, which governs the granting of Occasional Court Appearance, 38 applicants were called to the bar and admitted as solicitors.

### Good Character

Between July 1st, 1994, and June 30th, 1995, the Admissions & Membership Committee reviewed nine applications to determine the "good character" requirement for call to the bar. The Committee concluded that in the case of six applicants, a hearing should be held to determine the issue of "good character" pursuant to section 27.

## Clinic Funding

Chair: Joan Lax

The Clinic Funding Committee is responsible for administering the clinic funding program and establishing policy and guidelines for the funding of community legal clinics. The Attorney General of Ontario allocated \$31.8 million to fund the clinic system the fiscal year ending March 31, 1995. In addition, the federal justice department contributed



\$300,000 for public legal information activities.

Community legal clinics are non-profit organizations governed by volunteer boards of directors which offer specialized legal services for people with low incomes. Most clinics provide services in poverty law areas, such as housing, social assistance and income security. A number of clinics are designated specialty clinics and provide legal services either in a specialized area of law (housing, workers' compensation), or to a particular client group (Aboriginal people, the elderly, people with disabilities, Chinese and Southeast Asian communities, Spanish-speaking people). More than 430 staff members in 72 clinics provide client representation, summary advice, referrals, public legal education, law reform and community development services in their communities.

#### **Ontario Community Legal Clinics – Statistics, 1994**

Files	36,058
Summary advice	169,791
Referral to:	
Private bar	13,230
Ontario Legal Aid Plan (certificates)	10,258
Other	50,166
Public legal education sessions	2,530
Legal education publications	353
Briefs/submissions to public bodies:	
Written	207
Oral	671

## **Communications**

Chair: Denise Bellamy

### **Lawyer Referral Service**

The volume of calls to the Lawyer Referral Service (LRS) remained constant at 174,000 in the 1995 fiscal year ended June 30th. On average the LRS handled approximately 700 calls per day.

As part of Law Society-wide program reviews, the Communications Committee requested that the ABA-PAR (American Bar Association-Program of Assistance & Review) conduct an on-site operational audit of the LRS last fall. Site visits are available free of charge to all Law Societies with institutional memberships in the ABA. The audit team, comprising three attorneys with expertise in administering lawyer referral programs, were asked to focus on following issues:

- how the Law Society's LRS could generate increased funding for the program in addition to its \$50 annual membership fee
- how the LRS could more effectively market its services to potential clients of middle income
- what operational/administrative procedures the LRS might implement to increase the efficiency of current operations

The ABA's report made a number of recommendations to improve service to members and clients, including:

- increasing public relations efforts to improve the visibility of the LRS in the community

- using client questionnaires on a regular basis to monitor quality of service received from the LRS and the lawyer
- investigating the implementation of a percentage fee system which would allow the LRS to receive a portion of the fee generated by the referral. This would augment membership revenues which currently cover just under 30 per cent of the costs of operating the LRS
- establishing standards for membership on LRS panels to ensure that the Service is able to match clients with lawyers who have actual experience in the required area of law.

These recommendations, among others, will be considered by the Communications Committee in the fall.

### **Dial-a-Law**

Calls to the Society's province-wide toll free Dial-a-Law service (DAL) totalled 217,030 for the period July 1, 1994 to June 30, 1995—a 13 per cent decrease from the previous year despite a budgetary increase of \$120,000 to increase Wats line access. The continuing decrease in calls is due to the serious budgetary cutbacks in the previous fiscal year which necessitated the removal of a number of Wats lines. As a result, a number of service users abandoned the program. Without undertaking an extensive advertising campaign to publicize the restoration of the service to pre-cutback levels, Dial-a-Law usage will continue at below capacity.

Due to continuing uncertainty about the Law Society's long-term commitment to DAL as well as its ability to provide appropriate funding in times of diminished resources, alternatives such as corporate sponsorships and pay-for-use 900 services are being investigated.

## **County and District Liaison**

Chair: Robert C. Topp

The committee ensures that the County and District Law Presidents' Association is kept aware of the issues under consideration by the Society. Executive members of the CDLPA are represented on the committee which also functions as a vehicle for bringing the Association's concerns to the benchers. Last year the CDLPA adopted a variety of resolutions at the November 1994 and May 1995 plenary sessions. These were subsequently forwarded to Convocation.

The resolutions reflect the major issues of concern to the CDLPA: the errors and omissions insurance program, the prosecution of paralegals for the unauthorized practice of law and the Ontario Legal Aid Plan's funding problems.

## **Discipline**

Chair: David W. Scott, Q.C.

### **Statistics**

During the fiscal year ended June 30, 1995, 480 complaints were issued by the Society alleging professional misconduct or conduct unbecoming a barrister and solicitor – an



increase of 127 complaints or 36 per cent over the previous year.

Seventy-four (74) lawyers were reprimanded in committee. In addition, approximately 80 lawyers were invited to attend before the Discipline Committee to receive its advice concerning minor breaches of the rules of professional conduct.

Convocation dealt with 51 discipline matters in 1994 resulting in the following dispositions:

Reprimands	10
Suspensions	26
Permission to resign	6
Disbarments	9

### **Expediting the Discipline Hearing Process**

Commencing January 1995, a hearings assignment tribunal or "Assignment Court" was instituted on a trial basis to hear all set dates and consent motions for adjournment. In the period January 1995 to June 1995, the hearings assignment tribunal heard over 400 matters. In April and June, 1995, the hearings assignment tribunal also heard adjournments of matters scheduled for Discipline Convocation. The Tribunal has proven to be effective in dealing with matters which had previously consumed a significant amount of time of the Discipline Committee and Convocation.

### **Discipline Policy Committee**

In the fiscal year, the Discipline Policy Committee established sub-committees to consider: (1) the current regulations relating to bankrupt members and amendments to the *Law Society Act* in order to reflect the changes in the *Bankruptcy and Insolvency Act*; (2) a policy as to how criminal convictions or quasi-criminal convictions entered against members are handled in the discipline process; (3) the practice regarding joint submissions of counsel on penalty at the committee level and at Convocation; and (4) search warrants of law offices. The Committee received reports from its sub-committees on (1) the Society's acceptance, retrieval and storage of client files of members not in practice; (2) legislative amendments to permit the use of electronic transfer of trust funds; (3) the re-organization of the investigative departments of the Society to improve efficiency; and (4) the freezing of trust accounts and the distribution of trust funds.

### **Complaints**

A total of 5,513 complaints were received by the Law Society in the 1994 calendar year. This represented a decline of about five per cent from the previous two years. Figures for the first six months of 1995 indicate a further decrease which, if continued, will result in a total of approximately 5,000 complaints being received in this calendar year.

Procedural changes and staff reorganization have improved the Society's ability to accurately evaluate complaints at a preliminary stage. This has reduced the number of matters that require full-scale investigation.

Increased emphasis has also been placed on resolving matters between lawyers and complainants by telephone. The response of all parties has been largely positive and the "success" rate in these cases is in the 90% range.

Civil litigation (35%), real estate (20%) and family law (18%) continue to be the primary subject areas of complaint while the failure to pay practice-related debts, delay and communication problems continue to be the most common issues of concern to complainants.



## **Audit & Investigation**

The Department of Audit & Investigation's investigative case workload has remained relatively constant this past year.

The examiner programs section of the department expended significant resources in the examination of more than 250 law firms in which (1) lawyers were practising under suspension (2) complaints of a financial nature were received from the public, or (3) lawyers were experiencing financial difficulty as evidenced by bankruptcy or the issuance of NSF cheques. This also included more than twenty examinations which specifically focused on law firms where the firm's annual filing reports with the Society reported a significant number of private mortgage investments on behalf of private lenders. Reviews pertaining to mortgage investments made through law firms are being conducted in order to reduce the number of instances in which clients suffer losses from private mortgage investments.

The forensic audit program of the department referred over 70 briefs to the discipline department regarding findings of evidence of professional misconduct and conduct unbecoming a barrister and solicitor. Thirty-two briefs reported the misuse of trust money.

The resources of the office of the staff trustee continued to be strained in attending to the practices of bankrupt lawyers and in executing the orderly dissolution of practices. Although bankruptcy matters remained relatively constant in comparison to the previous year, the trustees experienced a significant increase, to 140 members, in the number of cases where a watching brief was kept because of pending discipline proceedings. It is anticipated that with the significant number of matters currently under consideration by the discipline department, the trustees' workload will continue to be high in the next year. In addition, over 300 lawyers made enquiries about retiring or ceasing to practise representing an increase of 100 enquiries over the previous year.

## **Equity in Legal Education and Practice**

Chair: Marie Moliner

Rule 28 (Non-Discrimination) was adopted in September 1994. The committee has been working on the preparation of educational materials for the profession to assist them to understand their obligations under Rule 28. Bulletins covering "Law Relevant to Rule 28", "Recruitment and Hiring" and "Employment Within Law Firms" have been circulated to the profession. In the coming year, bulletins dealing with "Partnership", "Relations with Other Members of the Profession", "Service to Clients" and "Accommodation" will be circulated to the profession. It is also expected that model policies relating to the application of Rule 28 will also be prepared and circulated.

The committee is currently considering a bicentennial equity project to commemorate the Law Society's bicentennial. A mentoring program for equity students beginning in first year and continuing throughout law school, the bar admission course (including articling) and the first years of practice is being contemplated.

The placement of students seeking articling positions continues to be of particular concern to the committee because aboriginal and visible minority students appear to represent a disproportionately high percentage of unplaced students. This issue requires further study. The committee is working closely with the Legal Education Committee in its efforts to place these students.



The committee has also consulted with the National Canadian Council of Filipino Associations in an effort to provide effective assistance to foreign trained lawyers seeking to qualify in Ontario. A number of alternatives have been considered and others are being examined to determine how best to assist this group.

The committee continues to monitor implementation of the recommendations contained in the Wilson Task Force Report on Gender Equality in the Legal Profession. This work is being carried out in cooperation with the Women in the Legal Profession Committee.

## Finance and Administration

Chair: Thomas G. Bastedo

The audited financial statements for the Law Society's three funds are set out separately at pages 28 to 49 of the Annual Report. The General Fund and the Lawyers Fund for Client Compensation are accompanied by the audit opinions of Coopers & Lybrand. The Combined Errors and Omissions Insurance Fund, audited by Deloitte & Touche, is accompanied by the opinion of the valuation actuary, Eckler Partners Ltd. Comment on the results of the operation of the insurance program is included in the Insurance Committee report at page 14 in this report. Comment on the Lawyers Fund for Client Compensation is included at page 16.

### History of Annual Fees

Monies paid by members for the General Fund portion of their annual fees are accounted for separate from the funds collected on behalf of the County & District Libraries, Lawyers Fund for Client Compensation (described elsewhere), the costs of the administrative expenses of the Ontario Legal Aid Plan, and the Lawyers' Professional Indemnity Company Capitalization Fund, and Errors and Omissions Levy Waiver Fund.

Fees for 1994/95, together with the fee for 1995/96 are set out as follows:

Annual Fee Component	1995-96	1994-95	1993-94	1992-93	1991-92
General Fund	\$841	\$758	\$758	\$778	\$781
County Library Fee	116	81	81	79	68
Lawyers' Fund for Client Comp.	1	1	1	1	1
Legal Aid (Admin. Expenses)	266	292	292	292	240
LPIC capitalization	600	-	-	-	-
E & O levy waiver fund	11	-	-	-	-
<b>TOTAL</b>	<b>\$1,835</b>	<b>\$1,132</b>	<b>\$1,132</b>	<b>\$1,150</b>	<b>\$1,090</b>

Members will note that the increase in the annual fee for 1995/96 over 1994/95 results from four significant initiatives:

- the LPIC capitalization amount of \$600. Convocation, in approving the Insurance Task Force report in October 1994, established a special assessment of \$600 per full fee paying member. This amount is intended to fund, over a four year period, the \$50 million capitalization requirement for the Lawyers' Professional Indemnity Company,
- the Society's captive insurance corporation.
- the Errors and Omissions Insurance Levy waiver fund. This fund, budgeted at \$250,000, or \$11 per full fee paying member, was established to grant relief to members who could demonstrate that they could not afford the cost of insurance due



to severe financial hardship. This was also a recommendation of the Insurance Task Force.

- an increase of \$35 to the County & District Library fee to be used to enhance the collections in these libraries. Significant pressure has been placed on the 47 County & District libraries in the province. It was an initiative of the County & District Law Presidents' Association and the Society's Library Committee that an additional \$35 be added to this levy.
- the General Fund portion of the annual fee increased from \$758 to \$841, due in part to additional resources required in the Society's Discipline department, the result of a 36 per cent increase in complaints alleging professional misconduct or conduct unbecoming undertaken by the Society.

It should be noted that offsetting these increases is a decrease in the Legal Aid levy for 1995/96, reducing that levy from \$292, which had been held for three years, to \$266. The Society is carrying a separate fund, as part of members' equity, which is used to meet its obligation under the *Law Society Act* to fund 50 per cent of the assessable administrative costs of the Ontario Legal Aid Plan.

Of the full fee of \$1,835, less than half (\$841) funds the cost of the operations of the Law Society.

### Results of Operations

It should be noted as well that, within the General Fund there are two separate operations which comprise Legal Education: Bar Admission Course and Continuing Legal Education. They are budgeted to operate on a break-even basis on revenues generated by tuition fees, course registrations, and a grant from the Law Foundation.

The Statement of Expenses and Revenues at page 31 shows total general expenses of \$21,502,000 and total general revenues of \$22,890,000, both slightly higher than 1994. Revenues and expenditures for the Bar Admission Course, Continuing Legal Education, and the assessable administrative costs of the Legal Aid Plan are shown separately.

In total, revenues exceeded expenditures for the year by \$2,411,000, compared to \$1,423,000 in 1994.

Of this, \$1,105,000 represents amounts for Legal Aid assessable administrative costs which are in excess of the amount required under the *Legal Aid Act*. As mentioned above, this excess amount is held separately and shown on the Statement of Members' Equity at page 32.

Of the surplus generated from general operations, \$500,000 was budgeted for repayment of the long-term debt associated with the building addition at Osgoode Hall.

## French Language Services

Chair: Vern C. Krishna, Q.C.

The French Language Services Committee was established for the purposes of implementing and monitoring the FLS policy and departmental activities, securing funding and ensuring quality in communications/documentation.

This past year, the FLS Committee was mostly concerned with reviewing the relevance and cost-effectiveness of the Society's French language policy and services.

As part of the review of French language services, the Committee began looking into



FLS capability in various Law Society departments. Among the issues to be addressed are bilingual panels for discipline hearings, and the availability of bilingual standard forms and documents.

The committee also looked at some specific issues such as the bilingual citation of the Ontario Reports, the translation of amendments to the Rules of the Law Society, the approval by Convocation of official French-language documents such as the Code de déontologie (Handbook of Professional Conduct), the recommendations included on the Cousineau Report on the use of French in the Ontario justice system that deal specifically with the Law Society, the celebration of the tenth anniversary of legal bilingualism in Ontario, and the establishment of a translation policy. Most of these issues are still under review.

The development and implementation of a translation policy remains a priority, and it is expected that next year the Committee will be in a position to move forward on this issue, among others.

### **Human resources and training**

To ensure that the Law Society can communicate in French both in Toronto and Ottawa, designated bilingual positions are identified in all departments that come into contact with the public and the profession, and a language training programme is available to staff with a high intermediate or advanced level of French. According to the latest status report dated March 31, 1995, 85 per cent of designated positions have been filled. In addition, 26 staff members enrolled in the language programme (in-house instruction, language schools, correspondence courses).

### **Publications**

Member and public information remains a high priority and the availability of a number of key publications in French (newsletters, official documents), combined with a few promotional activities have resulted in an increased demand and greater use of services that are being offered.

### **Legal Education**

Legal education is once again an area of growth. All bar admission course reference materials have been translated. In 1995, the 40 to 60 students enrolled in the Ottawa French programme benefitted from a full-fledged French language legal education programme, including lectures, demonstrations, round tables and French-speaking instructors.

In the area of continuing legal education, French programs are offered jointly with other francophone and/or national lawyers' associations (AJEFO, ABC, ABC-0, CCLA, University of Ottawa). Seminars have been held in advocacy, real estate and legal writing.

## **Insurance**

Chair: Harvey T. Strosberg, Q.C.

The events that have affected the Society's Errors & Omissions Insurance Program since June 30, 1994, have been significant.

Convocation established a special Insurance Committee Task Force on June 27, 1994. Members of the Task Force included Thomas Bastedo, Susan Elliott, Abraham



Feinstein, Neil Finkelstein, Ross Murray and Harvey Strosberg as its Chair. It identified a significant deficit in the operations of the insurance program that arose as a result of serious problems in the operation and management of the insurance program.

The Insurance Committee Task Force presented detailed recommendations to Convocation on October 28, 1994, the most significant of which were as follows:

- a) that the Society continue to provide a professional liability insurance program;
- b) that the Lawyers' Professional Indemnity Company be operated in a commercially reasonable manner;
- c) that the Lawyers' Professional Indemnity Company be operated separate and apart from the Society;
- d) that the insurance program move towards a system in which the cost of insurance generally reflects risk.

As a result of the Task Force recommendations, new professional advisors were retained and a new chief executive officer, Malcolm Heins, was appointed to reorganize the management structure and business operations of the Lawyers' Professional Indemnity Company. In addition, full responsibility for the professional liability insurance program was transferred to Lawyers' Professional Indemnity Company and its new Board of Directors. The Board of Directors of LPIC as of June 30th, 1995, were as follows:

Ian D. Croft - Financial Executive  
 Douglas Cutbush - Insurance Consultant  
 Susan Elliott - Treasurer  
 Abraham Feinstein - Benchers  
 Malcolm Heins - President, LPIC  
 William Holbrook - Insurance Consultant  
 Robert J. McCormick - Insurance Consultant  
 Ross W. Murray - Benchers  
 Julaine Palmer - Former Benchers  
 Roderick Sonley - Lawyer, and CDLPA nominee  
 Harvey T. Strosberg - Benchers and Chair  
 James Wardlaw - Life Benchers

Effective January 1, 1995, the Lawyers' Professional Indemnity Company assumed the entire risk associated with the operation of the insurance program. New staff has been hired and an infrastructure has been put in place capable of managing the Society's insurance operations on a commercial basis.

The changes that have been implemented in the operations of the Society's Errors & Omissions insurance program during the 1994/1995 financial period only reflect the initial implementation of the Insurance Task Force recommendations. It is anticipated that full implementation of all the recommendations will take at least three years. In the meantime, as evidenced by these financial statements, the combined Errors & Omissions Insurance Fund, is being managed responsibly given the reduction of the deficit from \$153.2 million as at June 30, 1994 to \$125.1 million as at June 30, 1995.

The decisions which had to be taken to improve the operations of the Society's Errors & Omissions Insurance Program were difficult ones; however, the results of the insurance program in the last 12 months indicate they were sound.



## Lawyers Fund for Client Compensation

Chair: Clayton Ruby

### Claims Activity

Claims received by the Lawyers Fund For Client Compensation increased from 1994, when 163 claims valued at \$9.5 million were received. In 1995, 274 claims valued at \$19.5 million were received from clients claiming a financial loss had been suffered due to the dishonesty of their lawyers. While the number and value of the claims has increased, they are still well below the record high 354 claims valued at \$33 million received in 1992. The majority of the increase in 1995 is attributed to losses caused to clients by four former members of the Law Society.

The Fund closed 276 claims in 1995 and paid out grants totalling \$2.7 million – the same amount that was paid out in 1994. The awards, which are limited to \$100,000 per applicant, were paid to 177 clients of 46 dishonest lawyers.

The balance of the Fund as of June 30, 1995, stood at \$26.6 million. The outstanding claims still to be processed amount to \$19.8 million (\$10.2 million with limits applied), an increase from \$13.8 million (\$8.2 with limits applied) as at June 30, 1994. After payments of grants and expenses of \$3.4 million, there is an encroachment on the accumulated surplus in the Fund of \$1.3 million for the fiscal year. The levy will remain at \$1 per member for the next fiscal year.

The majority of claims to the Fund occur because clients leave funds with their solicitors to invest in private mortgages. Invariably this poses a conflict for solicitors who are acting for both borrower and lender. With the considerable reduction in real estate values in Ontario since the onset of the recession, many mortgage investments have suffered significant losses. In some cases, the failure to adequately disclose the risks of the investment to the client has constituted dishonest conduct on the part of the solicitor. Of the 276 claims closed during the year, 70 per cent were investment claims of which 50 per cent concerned mortgages.

Regulations under the *Law Society Act* have been amended to require lawyers to disclose to their mortgagee clients more detailed information about their security which is expected to result in fewer claims to the Fund.

## Legal Aid

Chair: Stephen Goudge

### The Challenges and Highlights of 1995

The 1995 fiscal year began on a grim note. Over 42,000 lawyer accounts remained unpaid from the year before because of the Ontario Government's inability to fund Legal Aid according to its requirements. The Plan therefore opened its books on April 1, 1994, with significant unfunded liabilities. To further aggravate this financial shortfall, the province announced one month after the 1995 fiscal year began that it would not be able to fund its share of the Plan's \$284.7 million budget.

Desperate to realize savings and raise much-needed revenues, the Legal Aid Committee embarked on an exercise to cut costs and identify additional funding sources. It marked the first time in the Plan's 28-year history that service cuts were being considered as a means to balance the budget.

Before any cost-cutting measures were approved, Convocation decided that negotia-



tions should be pursued with the provincial government to make its case for increased funding.

Under the leadership of the new Legal Aid Committee chair, Stephen Goudge, the Plan began an intensive round of negotiations with the Ministry of the Attorney General during the months of August and September 1994, just as Legal Aid's deficit began to grow. The Plan took the position that its financial stability and ability to manage within budget were dependent upon receiving a long-term funding commitment from the government. Due to the fact that Legal Aid's liabilities are actually incurred almost one year before payment is due, year-to-year budgets did not allow sufficient lead time to manage within a closed funding "envelope".

### **Memorandum of Understanding**

The product of the funding negotiations was a four-year memorandum of understanding (MOU) — an agreement which yielded fixed funding allocations from the government for each of the four years from 1995 to 1999 in exchange for a commitment on the part of the Law Society and the Plan to manage within those allocations. The funding levels set out in the MOU were premised on a number of historical projections, namely the estimated number of certificates to be issued, the average cost per account and the number of accounts to be received.

Through a combination of commercial and government loans, the Plan was provided a total of \$45 million in bridge financing. It was intended that these loans would be cleared up at the conclusion of the four years from the surplus resulting from the excess of receipts over expenses that the Plan would accumulate due to decreased demand for certificates.

For their part, the Law Society and the Legal Aid Plan assumed responsibility for implementing a management plan in an effort to ensure that expenditures remained on target for the duration of the agreement.

### **The Challenge of Moving to Reduced and Fixed Funding Levels**

By the end of fiscal year 1995, the number of certificates issued has matched projections used in negotiating the MOU very closely. On the other hand, the number of accounts received by the Plan and the average cost of each has skyrocketed. The average cost per account has increased by 13 per cent to \$1,050 from the \$930 projected at the time the MOU was ratified. This is further aggravated by the fact that the Plan now anticipates receiving almost 40,000 more accounts than were budgeted for in the MOU — an increase of about 18 per cent.

In response to the changing numbers which, if the trend continued, would leave the Plan with a significant shortfall by the end of the current fiscal year, the Legal Aid Committee prepared a number of short term measures such as tariff and service cuts to curb the deficit, along with a Plan for long-term systemic changes necessary to give the Plan greater financial predictability.

## **Legal Education**

Chair: Philip M. Epstein, Q.C.

### **Calls to the Bar**

In February of 1995, 1,077 graduates of the bar admission course were called to the Ontario bar. According to a survey completed by 963 of the new graduates immediately prior to their call, 62 per cent reported having found employment, 34 per cent were



seeking employment, and another four percent were pursuing other activities such as higher education. The statistics are in line with the previous year.

### **Bar Admission Course Review**

Since 1990, the bar admission course has consisted of three phases: the skills-oriented, small group format teaching terms known as Phases I and III, and the Phase II articling term. The course is offered in London, Toronto and Ottawa where it is available both in French and English.

The bar admission course review subcommittee has undertaken a review of the course, and has considered how the course might be enhanced. The subcommittee has submitted a report to Convocation, which is being circulated to the profession, law schools, and other interested persons for consultation purposes.

### **Articling**

Articling is a fundamental part of the bar admission educational process. The articling program has been organized with a view to enhancing the quality of articling as an educational experience. The Law Society's articling subcommittee oversees and regulates the articling experience and monitors placements for articling students. Regulation of the articling program includes screening of articling placements, approving prospective articling principals, monitoring individual articling experiences through filing of education plans and related reports for each articling position, and providing an education program for articling principals.

Unfortunately, the recession continues to have a negative impact on the availability of articling positions. The Law Society has therefore worked pro-actively to generate new articling positions and to assist students who are having difficulty in finding a placement. Through an intensive campaign, there has been considerable success in locating articling placements for many students – only 47 students (four per cent) out of a total number of 1,263 did not find articling positions in the 1994-95 articling year.

### **Continuing Legal Education**

The Law Society offers continuing legal education programs through its facilities in London, Ottawa and Toronto, and in many other locations throughout Ontario. Through co-operation with the County and District Law Associations, the Law Society continues to enhance its program offerings outside of the major urban centres. The Law Society's continuing legal education programming is financially self-sustaining through revenues from course registrations and the sale of books and tapes. Course offerings consist of a combination of live programs, video replays, skills workshops and hands-on computer education.

In the 1995 financial year, the CLE department organized 185 programs that attracted 7,927 registrants.

### **Financial Aid and Placement**

The Law Society gratefully acknowledges donations from the following individuals and groups that have created bursaries for students in the Bar Admission Course.

- The Benjamin Luxenberg, Q.C., L.S.M. Memorial Bursary (sustained by his wife)
- The C.E. Woollcombe Q.C. Memorial Bursary (established by the firm Day Wilson Campbell in memory of their partner who passed away in 1983)
- The Osgoode Hall Class of 1951



- The Doctor N.W. Hoyles Memorial Trust (established by the Osgoode Hall Class of 1923)
- The Estate of Margaret Fraser
- The Gordon F. Henderson C.C., O.C., LL.D., Memorial Bursaries (established by the firm Gowling, Strathy & Henderson in memory of their former Chairman and Senior Partner who passed away in 1993)
- The Harold G. Fox Education Fund (established by the late Dr. Fox, eminent member of the Law Society, scholar, teacher, author and practitioner of international distinction in the area of patent and copyright law)
- The Honourable Bertha Thompson Memorial Trust (established by her husband in 1992)
- The Joseph Philip Chetner Memorial Bursary (established by the firm of Torkin, Manes, Cohen & Arbus in 1989)
- The Lawyers' Club Bursary
- The Maxwell A. Levy, Q.C. Memorial Trust (established by his wife and son)
- The Murray Keyfetz, Q.C. Memorial Trust (established by his wife and daughter)
- The Robert James McLaughlin Memorial Trust
- The Terence Sheard C.B.E., Q.C. Memorial Trust (established by his wife)
- The Victor & Sileen St. Lewis Bursary (established in 1993 by their daughter, Joanne, to assist African-Canadian students)

### **Mandatory Continuing Legal Education**

The mandatory continuing legal education subcommittee is exploring the desirability of introducing mandatory continuing legal education in Ontario. The subcommittee has produced a discussion paper, which has been approved by Convocation for purposes of consultation.

The subcommittee has not yet come to a conclusion about the desirability of introducing mandatory continuing legal education, and at this time is exploring all sides of the issue through an extensive consultation process with the profession throughout Ontario.

## **Legislation and Rules**

Chair: Maurice Cullity, Q.C.

The principal activities of the Legislation and Rules Committee are to draft amendments to the *Law Society Act*, the regulations made under the Act, and the rules and forms made under the Act, which are necessary to implement policy decisions of Convocation. Some of the more important amendments drafted by the Committee during the 1994-1995 committee year are set out below.

### **Amendments to the Law Society Act, R.S.O. 1990, c. L.8:**

(This legislative provision has not been enacted).

#### *Abolition of life bencher status*

On November 25, 1994, Convocation voted on motions relating to the office of life bencher which arises from continuous service as an elected bencher. A motion to eliminate the office of life bencher and a motion exempting elected benchers qualifying for life bencher status at the end of the 1991-1995 bencher term were carried in Convocation. The Committee drafted the text of proposed amendments to section 12 of the Act, necessary to give effect to the resolutions, and it was adopted by Convocation.



### **Amendments to Regulation 708 made under the *Law Society Act*:**

(not yet in force)

#### *Single bencher discipline hearing panel*

An amendment to section 9 of Regulation 708 was drafted to permit the quorum of the Discipline Committee, convened to hear a complaint, to be one bencher in certain instances (where the complaint relates to an offence of an administrative nature, or where the member and counsel for the Law Society have consented to a hearing before a single bencher Discipline Committee). The amendment was approved by Convocation but has not yet come into force; it is awaiting the approval of the Lieutenant Governor in Council.

#### *Admission by transfer*

An amendment to section 4 of Regulation 708 was drafted and approved by Convocation to provide for a uniform set of requirements to be met by applicants for admission to membership in the Law Society by transfer from any Canadian jurisdiction. The amendment has not yet come into force; it is awaiting the approval of the Lieutenant Governor in Council.

#### *Requirement to maintain Forms 4 and 5*

An amendment to section 15.2 of Regulation 708 was drafted and approved by Convocation. Section 15.2 stipulates a member's obligation to maintain certain records, including Forms 4 and 5, when arranging mortgages for clients. The amendment has not yet come into force; it is awaiting the approval of the Lieutenant Governor in Council.

### **Amendments to the Rules made under the *Law Society Act*:**

#### *Rules of procedure for the annual general meeting*

New rules of procedure for the annual general meeting and other meetings of members were drafted by the Committee and approved by Convocation.

#### *Forms 4 and 5*

Amendments to the forms, which are required to be maintained in clients' files by members who arrange mortgages for clients, were drafted by the Committee and approved by Convocation.

#### *Mortgage transactions reviewed by public accountant exemptions*

A new Schedule A to Form 4 was drafted by the Committee and approved by Convocation. The Schedule, when fully executed, exempts certain mortgage transactions from the sample of private mortgage transactions to be reviewed annually by the public accountant pursuant to section 16 of Regulation 708. Related amendments to Schedule A to Form 3 were also drafted by the Committee and approved by Convocation.

The Committee was also responsible for the following:

### **Court application for interpretation of rule-making powers of Convocation**

On September 23, 1994, Convocation adopted a recommendation from the Committee that an application be made to the Ontario Court (General Division) for the interpretation of the Law Society Act to determine if Convocation had the authority to implement by way of rules the scheme of regional election of benchers adopted by Convocation in 1993. The application was argued on November 16, 1994. The decision was released on January 6, 1995. The court ruled that Convocation did not have the authority to make rules providing for the regional election of benchers and that amendments to the Act



would be required. (Amendments to the Act had earlier been drafted by the Committee and approved by Convocation.)

### **Legislation and Rules Manual/Professional Conduct Handbook**

In January 1994, Convocation approved the production, under the direction of the Committee, of a Legislation and Rules Manual/Professional Conduct Handbook. The Manual/Handbook, containing the English and French texts of the Law Society Act, the Barristers Act, the Solicitors Act, Regulations 708 and 709, the Rules made under the Law Society Act and the Rules of Professional Conduct, was distributed to all County and District Law Libraries and Ontario Law School Libraries. The contents of the Manual/Handbook have been made available to CLE (Publications) for sale to members and the general public. In committee year 1994-1995, the Committee oversaw the production and distribution of the first update to the Manual/Handbook.

## **Libraries and Reporting**

Chair: Susan Elliott

### **Publishers' Lawsuit on Law Society's Library Copying/Fax Service**

The Law Society of Upper Canada is being sued by three publishers of legal materials for copyright infringement. The three publishers are:

Thomson Canada Limited (c.o.b. as Carswell Thomson Professional Publishing)  
CCH Canadian Limited  
Canada Law Book Inc.

The allegation of infringement arises from the Great Library's practice of making photocopies and providing facsimile copies for members of the legal profession. The copies made by the Great Library are primarily reported cases, but also include selected portions of legislation and articles, and a relatively few number of selected portions of textbooks. The publishers allege that the Great Library's reproduction and transmission of copies of these works constitutes copyright infringement.

The Law Society has several defenses, all of which are set out in an edited version of the Law Society's statement of defence.

The most important defense arises from the *Copyright Act* itself, section 27(2)(a) which provides as follows:

27(2) Acts not constituting infringement of copyright. - The following acts do not constitute an infringement of copyright:

(a) any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary.

The Law Society's position is that the making and provision of photocopies by the Great Library constitutes fair dealing with these works for the purposes of research, review, criticism and/or private study. The Law Society believes that this "fair dealing" embraces the role that the Law Society plays in making primary and secondary sources of the law accessible to members of the profession and the judiciary.

This case is a landmark in Canadian jurisprudence as there is currently no law in either Canada or any other jurisdiction which bears directly on these particular issues. The case will determine whether lawyers and the judiciary will be required to pay royalties when making copies of court decisions for use in connection with research, review, study and submission to the court.



Had the Society agreed to either discontinue its photocopying/facsimile services or pay a royalty to the publishers for each copy made, the law suit would have been discontinued. Settlement negotiations broke down when it became apparent that the publishers wanted an acknowledgement from the Law Society that royalties had to be paid for this type of use of their publications. The publishers clearly intended to use their success in these cases in their dealings with other libraries, lawyers and law firms throughout Canada to obtain royalties for photocopying of cases and other legal materials.

The Law Society has instructed its counsel (Gowling, Strathy & Henderson) to defend this action vigorously and to raise all legitimate issues, including those relating to the administration of justice and the rule of law in Canada.

### County Libraries

There are 47 county and district libraries in Ontario. The establishment of eight judicial regions by the Government of Ontario coincided in 1990 with the Law Society's new emphasis on using local need as criteria to determine the Law Society's grant allocations amongst the 47 county and district libraries.

Sixteen counties receive substantial extra funding (over and above "basic" funding), because of their regional or "sub-regional" responsibilities. These sixteen counties have more than 150 members. The smaller counties average 40 members. In 1995, grants ranged from \$98,000 for larger regions down to \$40,000 for smaller counties. In addition, local revenue is generated by library fees that average \$240 for the 46 county law associations outside Toronto, and a \$95 library fee for the County of York Law Association in Toronto.

In order to increase funding for the county library system (after several years of decreased Law Foundation grants coinciding with dramatically increased subscription costs), and to create a technology reserve, the Law Society raised its County Library Levy by \$35 (from \$81 to \$116) for the 1995-96 fiscal year. The levy increase had the full support of the County & District Law Presidents' Association (CDLPA) and the County of York Law Association.

## Professional Conduct

Chair: Marc J. Somerville, Q.C.

Convocation recently adopted a Rule of Professional Conduct (Rule 29 - Conflict Arising as a Result of Transfer Between Law Firms) to deal with the issue of conflicts that may be created when a lawyer changes firms. The rule was developed by a committee of the Federation of Law Societies in response to the 1990 Supreme Court of Canada decision in *Martin v. Gray*.

A motion has been put before Convocation which, if passed, would prevent a lawyer from acting for more than one party in a real estate transaction (except in certain limited circumstances). This motion has been discussed at two committee meetings and will be discussed further in September 1995 after the input of various organizations and the profession has been received.

The Committee is presently considering the recommendation of the ADR implementation sub-committee that a new Rule of Professional Conduct be adopted that would oblige lawyers to advise clients of alternatives to litigation.



# Professional Standards

Chair: Colin D. McKinnon, Q.C.

## Practice Review Programme

At present, 150 members are participating in the PRP; involvement in the PRP typically lasts from one to two years.

## Development of Standards

To date, checklists have been prepared for residential real estate, criminal defence, family law, and wills and estates. The checklists are distributed to members of the profession who, indicate that they practise in these areas. Publication of two checklists per year, on average, is anticipated. The checklists are also translated into French.

## Loss Prevention Education Program

The program is being offered in conjunction with the County and District Law Associations, as a pilot project in the current and forthcoming fiscal year. The program is being offered regionally, addressing such topics as computerization of the law practice; office systems; hiring and retaining effective staff; financial management.

## Practice Advisory Service

### *Advising the Profession*

Once again, the Service saw an increase in demand during the current year. We estimate that the total number of requests for assistance will be just under 9,000. This is a dramatic increase since 1992 when the number was 5,300. The staff of three lawyers, a half-time systems adviser, and three secretaries has been augmented by one half-time lawyer, which has eased the load on the staff somewhat.

We continue to provide a much-needed service to newly-called members of the profession (1991-95 calls) who represent 35 per cent of our calls. Nevertheless 21 per cent of calls come from members called more than 20 years.

A large number of calls reflect stress felt by members due to a variety of factors outside the actual practice of law. For example, the insurance crisis generated calls about retirement and alternate careers; the GST generated calls about how to deal with unclear government regulation. Issues of conflict and confidentiality are high on the list of Rules of Professional Conduct questions.

### *Mentor Services*

Although the whole of the Practice Advisory Service is a form of mentoring, the Service cannot provide legal or procedural advice. Formal mentoring systems are in the process of being established. At present, a family law mentor system exists, and a system for civil litigation is being established. The mentors' names are not advertised to the profession; the Service contacts the mentor and asks the mentor to call the member.

### *Start-Up Workshops*

A workshop is held at least once a month, and additional workshops are scheduled for the bar admission course. It is a day-long, intensive program, covering the costs inherent in establishing a practice, administrative requirements, marketing issues, office systems, books and records, and current difficulties being experienced by sole practitioners. It is designed for both newly-called members of the bar and members who may have worked in large firms and are now establishing their own practices.



## Research and Planning

Chair: Lloyd Brennan, Q.C.

### **Statement on the Role of the Law Society**

In October 1994, the Society adopted a role statement and commentary drafted by the Research and Planning Committee. The purpose of the role statement was to define the limits of the proper role of the Law Society and to serve as a standard against which all activities could be measured to determine their respective priorities. Convocation adopted a number of recommendations including, inter alia, a directive that the Role Statement serve as a guide to departments in preparing budgetary and program recommendations in future fiscal years and that all committees review their current and proposed activities, programs and proposals in light of its provisions.

### **Review of Law Society Programs in Light of the Role Statement/Objectives and Goals Conference**

All committees were directed to review their current and proposed activities, programs and proposals in light of the role statement once adopted. It is intended that the review will be the first step in a conference leading to the establishment of priorities and objectives for the Law Society. The review has been completed and an objectives and goals conference is planned for January 1996.

### **Review of Research and Planning Committee's Terms of Reference**

As part of the review of its own programs, the Research and Planning Committee decided to review its terms of reference to consider whether they are consistent with the role statement. A subcommittee was appointed to conduct the review and advise Convocation on recommended changes.

### **Dispute Resolution Implementation Subcommittee**

In February 1993, Convocation adopted a report concerning the role of the Law Society in relation to alternative dispute resolution. In the spring of 1995, the Research and Planning Committee presented to Convocation a series of recommendations from its Dispute Resolution Implementation Subcommittee relating to rules of professional conduct for lawyer-mediators. The text of a draft rule concerning ADR has been referred to the Professional Conduct Committee.

### **Subcommittee on Professionalism**

In March 1994, the Research and Planning Committee appointed a planning subcommittee on professionalism and the challenge of commercialism to propose terms of reference for a subcommittee to explore issues of commercialism in the legal profession. A subcommittee on professionalism will be established in the fall of 1995.

### **Lawyers' Liaison Steering Group**

In February 1995, the Research and Planning Committee was instrumental in convening a meeting of representatives of the Law Society, the County and District Law Presidents' Association and the Canadian Bar Association (Ontario). The central purpose was to create a steering group to consider ways to promote the interests of the legal profession while recognizing the role the Law Society plays in protecting the public interest. The steering group continues to meet and expects to bring together a larger group of repre-



sentatives from various organizations in the legal profession to discuss these issues in greater detail.

## Specialist Certification Program

Chair: Roger D. Yachetti Q.C.

Over the 1995 fiscal year, the Specialist Certification Board awarded the specialist designation to 129 lawyers. Of these, 37 were from new applicants and 92 were recertification applicants. Regionally, 49 per cent of these lawyers are from the Metro Toronto area, 11 per cent from the Ottawa-Hull area and 37 per cent from other areas of Ontario. Only five applications received were from female lawyers, a concern to be addressed in the coming year. As of June 30, 1995, there were 556 certified specialists in Ontario.

In November of 1994, the Board began accepting applications for certification in Bankruptcy & Insolvency Law and in May 1995, the Board voted to move forward with the implementation of the Environmental Law Specialty area. These two new additions bring the list of available specialty areas up to nine—an amount equivalent to most of the largest and longest running programs in the United States.

Other highlights of the year included: the appointment of a new administrator to oversee the running of the program and its specialty committees; the Board's approval of a definition of "substantial involvement" in a specialty area to allow lawyers to apply for dual certification; and, most importantly, the Board renewed its commitment to secure funding and aggressively pursue the development of a training and testing component for the Specialist Certification Program. Current projects underway for the new fiscal year include a promotional campaign to raise the general public's awareness of the program.

## Unauthorized Practice

Chair: Patricia J. Peters, Q.C.

The Unauthorized Practice Committee continues to actively investigate instances of the unauthorized practice of law and directs the work of the Unauthorized Practice Department.

Two hundred and seventy-two complaints were received by the department in the fiscal year 1994 - 95. An additional 143 persons sought information about paralegals and lawyers. The department commenced investigations of 41 new matters and conducted 10 prosecutions. In addition, the Law Society was a respondent on one appeal and on one judicial review application.

In the summer of 1994, the Unauthorized Practice Department conducted an extensive review of its activities in the light of the Law Society's role statement. A memorandum was prepared in September 1994 and approved by the Unauthorized Practice Committee for consideration by Convocation. It is expected that Convocation will debate the matter in the fall of 1995 after receiving responses from the County and District Law Presidents' Association and the Canadian Bar Association (Ontario).

The 1994 Memorandum identified the following policy objectives of the committee:

- (a) to protect the public from unqualified practitioners; and



- (b) to protect members of the profession who have fulfilled strict licensing requirements from wrongful infringement of their license.

The committee reported that the cost per prosecution in 1992 and 1993 was between \$14,000 and \$15,000 per file. This amount is inflated because one prosecution took two years to complete as a result of an extremely lengthy defence. A more realistic average would be \$10,000 per file.

The committee reported to Convocation that the continuation of prosecutions is not a reasonable way to resolve the problems associated with the growth of unregulated paralegals throughout the province. The committee made two recommendations:

1. That the Law Society continue to maintain the current level of prosecutions for one more year after which prosecutions by the Law Society would cease.
2. That the Law Society simultaneously urge the Attorney General of Ontario to consider legislation which would establish the training, licensing and regulation of paralegals.

In this regard, the committee recommended that the Law Society implement Convocation's 1992 Recommendation which was to establish a tri-partite committee consisting of paralegals, Law Society representatives and the Ministry of the Attorney General to discuss issues arising from paralegal practice.

Also in this fiscal year, the Unauthorized Practice Committee presented a written submission to the subcommittee on immigration consultants, calling for the regulation of immigration consultants and requirements for their training, licensing, discipline and insurance.

## Women in the Legal Profession

Chair: Paul D. Copeland

### **Merger with Equity Committee**

In October 1994, the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee met to discuss informally the possibility of merging the two committees. It was decided at that time not to move ahead with a merger.

### **Proposal that Elected Benchers Be Paid**

In January 1995, the Women in the Legal Profession Committee proposed to Convocation that elected benchers be paid on the grounds that the financial requirements and economic burden resulting from serving might deter many women and others in the profession from seeking election as benchers. It was hoped that paying elected benchers would encourage greater participation in the process of self-governance by members of the profession. Convocation did not accept the proposal but resolved that the matter should be investigated further after the benchers election.

### **Proposal to Follow up on Transitions Report**

In 1990 the committee retained Fiona Kay to undertake a study of the relationships between gender and work conditions in the legal profession. The results of the study were published as the Transitions Report in 1991. In the past year, the committee has explored the possibility of undertaking a follow-up research project. Dr. Kay met with the committee in June 1995 and outlined a research proposal. The extent of the project will



depend upon the availability of funds.

### **Statement of Values**

In April 1995, Convocation adopted a statement of values based upon recommendation 12.1 of the Report of the (Wilson) CBA Task Force on Gender Equality in the Legal Profession. The text adopted was as follows:

The Law Society of Upper Canada declares that the legal profession in Ontario is enormously enriched by, and values deeply, the full participation of men and women in our profession, regardless of age, disability, race, religion, marital or family status or sexual orientation.



# Financial Statements

	Pages
• <b>General Fund</b>	<b>29 – 35</b>
Auditors' Report, Financial Statements and Notes	
• <b>Lawyers Fund for Client Compensation</b>	<b>36 – 40</b>
Auditors' Report, Financial Statements and Notes	
• <b>Errors and Omissions Insurance Fund</b>	<b>41 – 49</b>
Auditors' Report, Actuary's Report, Financial Statements and Notes	



## General Fund Auditors' Report

### To the Members of The Law Society of Upper Canada

We have audited the balance sheet of the General Fund of The Law Society of Upper Canada as at June 30, 1995 and the statements of expenses and revenues, members' equity and changes in financial position for the year then ended. These financial statements are the responsibility of the Society's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Fund as at June 30, 1995 and the results of its operations and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

The financial statements as at June 30, 1994 and for the year then ended were audited by other auditors who expressed an opinion without reservation on those statements in their report dated November 3, 1994.

Toronto, Ontario  
September 15, 1995

*Coopers & Lybrand*

Chartered Accountants



## General Fund Balance Sheet

Stated in thousands of dollars

As at June 30	1995 \$	1994 \$
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and short-term securities, at lower of cost and market value	6,043	5,264
Accounts receivable	4,899	3,277
Due from Lawyers' Fund for Client Compensation	446	75
Due from Combined Errors and Omissions Insurance Fund	—	680
Inventory	182	123
Prepaid expenses and deferred charges	65	96
Total current assets	11,635	9,515
<b>FIXED ASSETS [note 3]</b>	18,760	19,330
<b>Total Assets</b>	30,395	28,845
<b>LIABILITIES AND MEMBERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Bank loan [note 8]	5,600	4,525
Accounts payable and accrued liabilities	2,368	2,909
Due to Combined Errors and Omissions Insurance Fund	396	—
Goods and services tax payable	3,273	2,003
Deferred revenue	2,952	1,513
Total current liabilities	14,589	10,950
<b>LONG-TERM DEBT</b>	—	4,500
Total liabilities	14,589	15,450
<b>MEMBERS' EQUITY</b>	15,806	13,395
<b>Total Liabilities and Members' Equity</b>	30,395	28,845

See accompanying notes

On behalf of Convocation:



Treasurer



Chair of Finance and Administration Committee

## General Fund

# Statement of Expenses and Revenues

Stated in thousands of dollars

For the year ended June 30	1995 \$	1994 \$
<b>EXPENSES</b>		
County libraries	2,582	2,634
Libraries and reporting	2,537	2,569
Finance and administration	2,232	1,748
Secretariat	2,067	2,039
Facilities	1,963	2,327
Audit	1,948	1,787
Complaints	1,816	1,805
Discipline	1,488	1,029
Communications	1,137	1,196
Catering	640	571
Interest	600	721
Professional standards	519	459
Admissions/member records	501	451
Practice advisory	474	424
Other expenses	228	126
Professional conduct	227	252
Unauthorized practice	184	167
Heritage	167	194
Certification	112	109
French language services	80	113
Total general expenses	21,502	20,721
Bar admission course	6,289	5,286
Continuing legal education	1,686	1,711
Legal aid assessable administration costs [note 4]	6,000	6,500
<b>Total expenses</b>	<b>35,477</b>	<b>34,218</b>
<b>REVENUES</b>		
Annual fees	17,346	16,961
County library - levy	1,802	1,706
Libraries and reporting revenues	1,065	1,051
Investment income	716	321
Other revenues	666	783
County library - The Law Foundation of Ontario grants	619	774
Catering	581	542
Certification	95	116
Total general revenues	22,890	22,254
Bar Admission Course		
Tuition and book fees	4,828	3,523
Grants - The Law Foundation of Ontario	1,303	1,444
Total Bar Admission Course	6,131	4,967
Continuing legal education	1,762	1,824
Legal aid levy [note 4]	7,105	6,596
<b>Total revenues</b>	<b>37,888</b>	<b>35,641</b>
<b>Excess of revenues over expenses for the year</b>	<b>2,411</b>	<b>1,423</b>
Comprising:		
Excess of revenues over expenses for the year - general operations	1,306	1,327
Excess of revenues over expenses for the year - legal aid	1,105	96

See accompanying notes



## General Fund

### Statement of Members' Equity

Stated in thousands of dollars

	1995		1994
	General	Legal Aid [note 4]	Total
For the year ended June 30	\$	\$	\$
<b>Members' equity, beginning of year</b>	12,420	975	<b>13,395</b>
<b>Excess of revenues over expenses for the year</b>	1,306	1,105	<b>2,411</b>
<b>Members' equity, end of year</b>	<b>13,726</b>	<b>2,080</b>	<b>15,806</b>

*See accompanying notes*

**General Fund****Statement of Changes in Financial Position**

Stated in thousands of dollars

	1995	1994
For the year ended June 30	\$	\$
<b>OPERATING ACTIVITIES</b>		
Excess of revenues over expenses for the year	2,411	1,423
Item not affecting cash		
Depreciation and amortization	1,168	1,141
Other operating sources (uses)		
Accounts receivable	(1,622)	683
Due from Lawyers' Fund for Client Compensation	(371)	7
Due from Combined Errors and Omissions Insurance Fund	680	876
Inventory	(59)	29
Prepaid expenses and deferred charges	31	(49)
Accounts payable and accrued liabilities	(541)	123
Due to Combined Errors and Omissions Insurance Fund	396	—
Goods and services tax payable	1,270	(1,829)
Deferred revenue	1,439	957
	4,802	3,361
<b>INVESTING ACTIVITIES</b>		
Fixed asset additions	(598)	(599)
<b>FINANCING ACTIVITIES</b>		
Long-term debt	(4,500)	(1,000)
Net (decrease) increase in cash position during the year	(296)	1,762
Cash position, beginning of year	739	(1,023)
<b>Cash position, end of year</b>	<b>443</b>	<b>739</b>
Cash position represented by:		
Cash and short-term securities	6,043	5,264
Bank loan	(5,600)	(4,525)
	443	739

*See accompanying notes*



## General Fund

### Notes to Financial Statements

For the year ended June 30

#### 1. Description of Fund

The General Fund comprises the assets, liabilities, members' equity, revenues and expenses of the various operations of the Law Society of Upper Canada (the "Society"), other than those designated to the Lawyers' Fund for Client Compensation and the Insurance Funds.

The Society is empowered to administer the Legal Aid Plan and to maintain the Legal Aid Fund in accordance with the Legal Aid Act. The extent of the Society's responsibility for funding the activities of the Legal Aid Plan is set out in note 4 to these financial statements. The Society reports annually to the Attorney General of Ontario on the accounts and financial transactions of the Legal Aid Fund. The financial statements of the Legal Aid Fund are subject to audit by the Provincial Auditor, and are not included in these financial statements.

#### 2. Significant Accounting Policies

##### *Cash and short-term securities*

Cash and short-term securities are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy.

##### *Inventory*

Inventory is valued at the lower of cost and net realizable value.

##### *Fixed assets*

Land, buildings, furnishings and major alterations are presented at cost net of accumulated depreciation and amortization and grants. Depreciation and amortization are charged to expense on a straight-line basis over the estimated useful lives of the assets as follows:

Buildings and leasehold improvements	3 to 30 years
Furniture and equipment	3 to 5 years

Minor capital expenditures in the amount of \$297,000 (1994 - \$ 177,000) are expensed in the year of acquisition.

##### *Deferred revenue*

Deferred revenue includes annual fees received in June prior to the July 1st due date and other funds received in prior years for specific future programmes.

##### *Volunteer services*

The work of the Society is dependent on the voluntary services of the benchers, lay benchers, and other members of the profession. These services are received gratuitously; therefore, no value has been included in these financial statements.

#### 3. Fixed assets

	1995			1994
	Cost \$000's	Accumulated Depreciation \$000's	Net \$000's	Net \$000's
Land, buildings, and leasehold improvements	29,482	11,449	18,033	18,453
Furniture and equipment	2,279	1,552	727	877
	31,761	13,001	18,760	19,330

#### 4. Legal Aid Levy

Pursuant to section 26 of the *Legal Aid Act*, the Society shall contribute to the Legal Aid Fund such a percentage of the total assessable administrative expenses as is set out in the regulations,

currently set at 50%. The 50% contribution required by the regulation may itself be reduced by up to 50% by the application of funds arising from the reduction of fees payable to solicitors in accordance with the regulation.

In order to fund this contribution to the Legal Aid Fund, the Society assesses its members a levy based upon projections received from the Legal Aid Fund. The levy for 1994/95 was \$292 per member (1993/94 - \$292). Any excess amounts collected are set aside for future use in reducing legal aid levies to the members in accordance with the Regulations pursuant to the Legal Aid Act.

#### **5. Endowment Funds**

The Society administers endowment funds in the amount of \$469,000 (1994 - \$477,000). At the end of the year, the funds consisted of investments of which \$240,000 (1994 - \$236,000) was capital and the balance of \$229,000 (1994 - \$241,000) was unexpended cumulative income. In accordance with the terms of the endowments, the Society awards prizes, bursaries and gifts. During the year, \$21,000 (1994 - \$32,000) was paid in respect of these awards.

#### **6. Pension Plan**

The Society maintains a defined contribution plan for all eligible employees. The plan covers 79 employees of the Society and 382 employees at the offices of the Legal Aid Plan. The Society matches its employees' contributions to the plan.

The Society's annual pension expense [excluding Legal Aid] for 1995 amounted to \$615,743 (1994 - \$565,244).

#### **7. Commitments**

The Society is committed to monthly lease payments for property and computer facilities under leases having various terms up to August 2002. Aggregate monthly lease payments over the next five years and in total are as follows:

Year	\$000's
1996	335
1997	315
1998	183
1999	192
2000 and thereafter	445
<b>Total</b>	<b>1,470</b>

#### **8. Bank Loan**

During the 1991/92 fiscal year the Osgoode Hall renovations were completed for a total cost of \$17,024,000. This total cost was financed through a \$12,500,000 revolving line of credit with the balance being provided through reserves set aside in prior years. Repayment of this revolving line of credit is to be completed by December 31, 1997.

The Society eliminated the long-term debt during the year and have \$5,600,000 of the revolving line of credit outstanding.

The authorized revolving line of credit is \$7,000,000 to December 31, 1995.

#### **9. Contingent Liabilities**

At June 30, 1995, there were three claims against the Society that have arisen as the result of alleged copyright infringement. At this point in time, the amount of monetary relief claimed is not specified and is not presently ascertainable. It is not possible, therefore, to make any realistic assessment of the possible extent of the exposure of the Society to liability for damages or other monetary relief.

#### **10. Comparative Financial Statements**

Certain of the 1994 comparative data has been reclassified to conform with the presentation followed in the current year.



## Lawyers Fund For Client Compensation Auditors' Report

### To the Members of The Law Society of Upper Canada

We have audited the balance sheet of the Lawyers Fund for Client Compensation of The Law Society of Upper Canada as at June 30, 1995 and the statements of expenses and revenues and fund balance and changes in financial position for the year then ended. These financial statements are the responsibility of the Society's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Fund as at June 30, 1995 and the results of its operations and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

The financial statements as at June 30, 1994, and for the year then ended were audited by other auditors who expressed an opinion without reservation on those statements in their report dated November 3, 1994.

Toronto, Ontario  
September 15, 1995

*Coopers & Lybrand*

Chartered Accountants

# Lawyers Fund For Client Compensation Balance Sheet

Stated in thousands of dollars

As at June 30	1995 \$	1994 \$
<b>ASSETS</b>		
Cash and short-term securities, at lower of cost and market value	4,784	6,429
Interest and other receivables	478	560
Portfolio investments, at amortized cost [market value - \$22,537; 1994 - \$20,852]	21,863	20,971
Fixed assets	66	2
<b>Total assets</b>	<b>27,191</b>	<b>27,962</b>
<b>LIABILITIES AND FUND BALANCE</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and accrued liabilities	144	2
Due to the General Fund	446	75
	590	77
Fund balance [note 3]	26,601	27,885
<b>Total liabilities and fund balance [note 3]</b>	<b>27,191</b>	<b>27,962</b>

See accompanying notes

On behalf of Convocation:

*Susan Elliott*

Treasurer

*Don W. Murray*

Chair of Finance and Administration Committee



## Lawyers Fund For Client Compensation

### Statement of Expenses and Revenues and Fund Balance

Stated in thousands of dollars

For the year ended June 30	1995 \$	1994 \$
<b>EXPENSES</b>		
Grants paid	2,724	2,753
Less: recoveries	(723)	(117)
Net grants paid	2,001	2,636
Administrative	1,044	993
Counsel fees	44	86
Referees and reporters fees	29	56
Salaries and benefits	285	287
Furniture and equipment	10	—
Depreciation	7	1
Reports and sundries	6	8
<b>Total expenses</b>	<b>3,426</b>	<b>4,067</b>
<b>REVENUES</b>		
Investment income	2,113	2,360
Annual levy	29	31
<b>Total revenues</b>	<b>2,142</b>	<b>2,391</b>
<b>Deficiency of revenues over expenses for the year</b>	<b>(1,284)</b>	<b>(1,676)</b>
Fund balance, beginning of year	27,885	29,561
<b>Fund balance, end of year</b>	<b>26,601</b>	<b>27,885</b>

*See accompanying notes*

# Lawyers Fund For Client Compensation

## Statement of Changes in Financial Position

Stated in thousands of dollars

	1995	1994
For the year ended June 30	\$	\$
<b>OPERATING ACTIVITIES</b>		
Deficiency of revenues over expenses	(1,284)	(1,676)
Item not affecting cash:		
Depreciation	7	1
Other operating sources (uses):		
Interest and other receivables	82	112
Accounts payable and accrued liabilities	142	(9)
Due to the General Fund	371	(7)
	(682)	(1,579)
<b>INVESTING ACTIVITIES</b>		
Fixed asset additions	(71)	—
<b>FINANCING ACTIVITIES</b>		
Portfolio investments	(892)	2,056
<b>Net (decrease) increase in cash and short-term securities during the year</b>	<b>(1,645)</b>	<b>477</b>
Cash and short-term securities, beginning of year	6,429	5,952
Cash and short-term securities, end of year	4,784	6,429

See accompanying notes



## Lawyers Fund For Client Compensation

### Notes to Financial Statements

For the year ended June 30

#### 1. Description of Fund

The Lawyers Fund for Client Compensation is maintained by The Law Society of Upper Canada pursuant to section 51 of the *Law Society Act* to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The fund is financed by members' annual assessments.

#### 2. Significant Accounting Policies

##### *Cash and short-term securities*

Cash and short-term securities are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy.

##### *Long term investments*

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of government and corporate bonds.

##### *Fixed assets*

Furnishings and major alterations are presented at cost net of accumulated depreciation and grants. Depreciation and amortization is charged to expense on a straight-line basis over the estimated useful lives of the assets as follows:

Furniture and equipment    3 to 5 years

Minor capital expenditures are expensed in the year of acquisition.

##### *Grants*

Pursuant to section 51(5) of the *Law Society Act*, the payment of grants from the Lawyers' Fund for Client Compensation is at the discretion of Convocation. No provision has been made in these financial statements for grants not approved by Convocation.

#### 3. Grant applications

At the year end, the total outstanding grant applications was approximately \$19,820,000 (1994 - \$13,839,000). Strict application of the applicable limits to existing grant applications indicate that the maximum grants under the programme would aggregate \$10,185,000 (1994 - \$8,228,000).

## Errors and Omissions Insurance Fund Auditors' Report

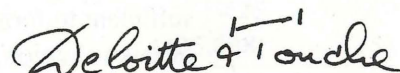
### To the Members of The Law Society of Upper Canada

We have audited the combined balance sheet of The Law Society of Upper Canada Errors and Omissions Insurance Fund as at June 30, 1995 and the combined statements of revenue and expenses and balance of deficit and of changes in financial position for the year then ended. These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these combined financial statements present fairly, in all material respects, the financial position of the Fund as at June 30, 1995 and the results of its operations and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

Toronto, Canada  
September 15, 1995



Chartered Accountants

## Errors and Omissions Insurance Fund Actuary's Report

for Combined Financial Statements at 30 June 1995

### Role of the Valuation Actuary

The valuation actuary is appointed by the Audit Committee of Lawyers' Professional Indemnity Company in their capacity as managers of the Law Society of Upper Canada Errors and Omissions Insurance Fund. With respect to the preparation of these combined financial statements, the actuary is required to carry out a valuation of the claims liabilities and to report thereon to the Audit Committee, and through them to the membership of the Law Society. The valuation is carried out in accordance with accepted actuarial practice, except as specifically disclosed to the contrary, and regulatory requirements. The scope of the valuation encompasses the claims liabilities, that is the provision for unpaid claims and adjustment expenses on claims incurred and reported prior to 30 June



1995, the date of these combined financial statements.

In performing the valuation of the liabilities for these future events, which are by their very nature inherently variable, the actuary makes assumptions as to future rates of claims severity, inflation, reinsurance recoveries, expenses and other matters, taking into consideration the circumstances of the Errors and Omissions Insurance Fund, Lawyers' Professional Indemnity Company and the nature of the insurance coverage being offered. The valuation is necessarily based on estimates, consequently, the final values may vary significantly from those estimates. The actuary also makes use of management information provided by the Law Society and Lawyers' Professional Indemnity Company, and uses the work of the auditor with respect to the verification of the underlying data used in the valuation.

#### **Valuation Actuary's Report**

I have valued the claims liabilities arising on the errors and omissions insurance coverage arranged by the Law Society of Upper Canada for its Errors and Omissions Insurance Fund combined balance sheet as at 30 June 1995, and their changes in its combined statement of revenue and expenses and balance of deficit for the year then ended, in accordance with accepted actuarial practice, except as described in the following two paragraphs.

In accepted actuarial practice, it is the actuary's responsibility to assure suitable procedures to verify that the data utilized is reliable and sufficient for the proper valuation of liabilities. As referenced in Note 4 to the combined financial statements, the claims data provided for this valuation may contain errors with respect to the presentation of multiple claims (involving one member of a law society, several claimants and one event giving rise to the claims). The information available on this issue at this time is not sufficient to form an opinion as to the materiality of the amounts involved, in the context of this valuation. With the express understanding of the management and Audit Committee of Lawyers' Professional Indemnity Company and the external auditor, this valuation uses the historical data as provided, without any provision or adjustment for this potential issue.

In accepted actuarial practice, it is the actuary's responsibility to assess the recoverability of claims under reinsurance contracts. As referenced in Note 4 to the combined financial statements, the claims data provided for this valuation may not be consistent with the ultimate resolution of ongoing discussions with regard to coverage for the period 1 July 1982 to 30 June 1989 between the Law Society of Upper Canada and American Home Assurance Company, the insurer above the policy deductible throughout this period. With the express understanding of the management and Audit Committee of Lawyers' Professional Indemnity Company and the external auditor, this valuation uses the historical data as provided, without any explicit provision or adjustment for this potential issue.

In my opinion, the valuation is appropriate, except as noted in the previous two paragraphs, and the financial statements fairly present its results.



Don Mills, Ontario  
15 September 1995

Brian G. Pelly  
Fellow, Canadian Institute of Actuaries

# Errors and Omissions Insurance Fund

## Combined Balance Sheet

Stated in thousands of dollars

As at June 30	1995 \$	1994 \$
<b>ASSETS</b>		
Bonds (1995 market value \$52,829)	51,423	59,740
Cash and short-term investments	45,271	17,247
Investment income due and accrued	926	1,256
Accounts receivable	6,514	2,772
Fixed and other assets	2,019	1,298
Interfund accounts receivable	396	—
<b>Total assets (note 5)</b>	<b>106,549</b>	<b>82,313</b>
<b>LIABILITIES AND BALANCE OF DEFICIT</b>		
Provision for unpaid claims and adjustment expenses (notes 4 and 6)	215,748	222,623
Prepaid levies and other deferred revenue	—	1,685
Accounts payable and accrued liabilities	15,474	5,481
Interfund accounts payable	—	680
Income taxes	425	5,000
Balance of deficit (notes 3, 5 and 6)	(125,098)	(153,156)
<b>Total liabilities and balance of deficit</b>	<b>106,549</b>	<b>82,313</b>

See accompanying notes

On behalf of Convocation:

*Susan F. Hiest*

Treasurer

*Ron W. Murray*

Chair of Finance and Administration Committee



# **Errors and Omissions Insurance Fund** **Combined Statement of Revenue and Expenses** **and Balance of Deficit**

Stated in thousands of dollars

	1995	1994
For the year ended June 30	\$	\$
<b>REVENUE</b>		
Members' levies (note 7)	107,631	63,240
Reinsurance commissions	3,905	-
Investment income	6,607	7,217
Other income	1,003	-
<b>Total revenue</b>	<b>119,146</b>	<b>70,457</b>
<b>EXPENSES</b>		
Net claims and adjustment expenses (notes 4 and 6)	58,254	169,869
Reinsurance premiums	29,345	5,315
General expenses	6,663	5,246
Premium taxes	1,539	254
Provision for/(recovery of) income taxes	(4,713)	5,000
<b>Total expenses</b>	<b>91,088</b>	<b>185,684</b>
<b>Excess/(deficiency) of revenue over expenses (notes 4 and 6)</b>	<b>28,058</b>	<b>(115,227)</b>
Balance of deficit, beginning of year	(153,156)	(37,929)
<b>Balance of deficit, end of year (notes 3,5 and 6)</b>	<b>(125,098)</b>	<b>(153,156)</b>

*See accompanying notes*

## Errors and Omissions Insurance Fund

### Combined Statement of Changes in Financial Position

Stated in thousands of dollars

	1995	1994
As at June 30	\$	\$
<b>OPERATING ACTIVITIES</b>		
Excess/(deficiency) of revenue over expenses	28,058	(115,227)
Add items not affecting cash:		
Income taxes	(4,575)	5,000
Depreciation and amortization	748	196
	24,231	(110,031)
Other operating sources (uses):		
Provision for unpaid claims and adjustment expenses (note 6)	(6,875)	105,078
Premium receivable	-	7,333
Accounts receivable	(3,742)	800
Unearned levy	-	(3,200)
Interfund balances	(1,076)	(876)
Prepaid levies and other deferred revenue	(1,685)	(7,422)
Accounts payable and accrued liabilities	9,993	2,875
Investment income due and accrued	330	-
Other assets	(392)	1,446
	20,784	(3,997)
<b>FINANCING ACTIVITIES</b>		
Net redemption of portfolio	8,317	3,005
<b>INVESTING ACTIVITIES</b>		
Additions to fixed assets	(1,077)	(232)
<b>Net change in cash and short-term investments</b>	<b>28,024</b>	<b>(1,224)</b>
Cash and short-term investments, beginning of year	17,247	18,471
<b>Cash and short-term investments, end of year (note 5)</b>	<b>45,271</b>	<b>17,247</b>

See accompanying notes



## Errors and Omissions Insurance Fund

### Notes to Financial Statements

For the year ended June 30

#### 1. The Insurance Program And Its Risk Retention And Reinsurance Structure

The combined financial statements of the Errors and Omissions Insurance Fund account for the net results of the Society's professional liability insurance program. The program requires practicing members to pay annual levies to fund the anticipated costs of professional liability claims made in each annual policy period. Indemnification of members is subject to the terms of the insurance policy, including financial limits per claim and aggregate limits per member in each policy period.

These financial statements combine the results of operations and the financial positions of:

- the Errors and Omissions Insurance Fund of the Society, the fund originally set up in the Society's accounts to record insurance claims and expenses and related levies and investment income; and
- Lawyers' Professional Indemnity Company ("LPIC"), a wholly owned subsidiary of the Society that was incorporated in 1990 and licensed as an insurer in Ontario and Newfoundland.

The risk retention and reinsurance structures employed through these two entities are described in the following paragraphs.

Prior to July 1, 1990, the Society's Errors and Omissions Insurance Program was underwritten by various insurance carriers subject to a policy deductible. LPIC took over the underwriting of the program commencing July 1, 1990. The Society maintained financial responsibility for the policy deductible through to December 31, 1994. The policy deductible was a combination of a group deductible and an individual member deductible. For the periods noted below, the policy deductible totaled:

July 1982 to June 1986	\$ 100,000 per occurrence
July 1986 to June 1988	\$ 150,000 per occurrence
July 1988 to June 1990	\$ 250,000 per occurrence
July 1990 to December 1991	\$ 200,000 per occurrence
January 1992 to December 1994	\$ 250,000 per occurrence

The Society arranged Stop Loss reinsurance that limited the exposure to the group deductible. The Stop Loss limits were as follows:

July 1982 to June 1983	\$ 8,605,894
July 1983 to June 1984	\$ 8,903,588
July 1984 to June 1985	\$10,000,000
July 1985 to June 1986	\$12,250,000
July 1986 to June 1987	\$20,000,000
July 1987 to June 1988	\$22,000,000
July 1988 to June 1989	\$27,000,000

The Society was not able to arrange Stop Loss reinsurance on its group deductible after the policy period ending June 1989. As a result, the full financial risk of the deductible rested with the Society, from July of 1989 through the policy period ended December 1994.

LPIC also had a net retention over the Society's deductible as follows:

- July 1, 1990 to December 31, 1991: LPIC is liable for \$50,000 of all individual losses in excess of \$200,000;
- January 1, 1992 to December 31, 1992: in addition to the \$250,000 per occurrence retention, LPIC is liable for an aggregate of \$2,500,000 from individual losses incurred in excess of \$250,000 plus a further 10% of all individual losses above \$250,000 once the initial \$2,500,000 limit has been reached; and
- January 1, 1993 to December 31, 1994: in addition to the \$250,000 per occurrence retention, LPIC is liable in each fund year for an aggregate of \$4,000,000 if incurred losses are above or exceed \$250,000 plus a further 10% of all losses in excess of \$250,000 once the initial \$4,000,000 limit has been reached.



It was decided, effective January 1, 1995, to eliminate the self-insured group deductible. Commencing January 1, 1995, 100% of the risk over the individual member deductible (base amount of \$6,000) is insured within LPIC. LPIC in turn reinsures 57% of its risk retention to third party Canadian licensed reinsurers. The policy limits for the period January 1, 1995 through December 31, 1995 are \$1,000,000 per claim and \$2,000,000 per member in aggregate.

## **2. Significant Accounting Policies**

These financial statements have been prepared in accordance with generally accepted accounting principles. The most significant accounting policies are as follows:

### *Members' Levies*

Members' levies are recorded when billed with the exception of those based on volume or transactions. These latter two levies, new in 1995, are recorded on a cash basis based on members' filings.

### *Bonds*

Bonds are recorded at cost when acquired. Premiums and discounts from par value are amortized to income over the term to maturity.

### *Short-term investments*

Short-term investments are stated at the lower of cost or market value.

### *Fixed Assets*

Fixed assets are presented at cost, net of accumulated depreciation and amortization. Depreciation and amortization are charged to expense on a straight-line basis over the estimated useful lives of the assets as follows:

Leasehold improvements	Term of Lease
Furniture and equipment	3 to 5 years

### *Provision for unpaid claims and adjustment expenses*

The insurance program covers claims made in a policy period. Accordingly, no provision is made for insured events that may have occurred where no claim has yet been made.

The provision for unpaid claims and adjustment expenses is presented net of members deductibles and reinsurance recoveries. The provision is determined using case-basis evaluations plus an amount for future development and is an estimation of the ultimate net cost of all insurance claims reported to June 30, 1995.

Since the amounts are necessarily based on estimates of future trends in claim severity and other factors, which could vary as the claims are settled, the ultimate liability may be more or less than the estimated amounts. Although it is not possible to measure the degree of variability inherent in such estimates, management believes that the provision for unpaid claims and adjustment expenses is adequate. Estimates are reviewed at least annually by an actuary and, as adjustments to these liabilities become necessary, they are reflected in current operations.

The provision for unpaid claims is presented net of a discount that reflects an estimation of the investment income that will be earned on funds until they are paid out in settlement of claims. The estimation of the discount is based on anticipated investment rates of return and experience with payout patterns on similar types of claims.

### *Income taxes*

Income taxes are recorded on the tax allocation basis, whereby income taxes are recorded in the period in which transactions affect income, regardless of when such transactions are recognized for income tax purposes.

## **3. The Deficit And The Viability Of Ongoing Operations**

The insurance program funds each year's expected costs with members levies. For various prior years, levies have proven inadequate and accordingly, the program has a deficit. That deficit is being funded by supplemental levies, over a four year period, pursuant to a plan approved by Convocation in October 1994.

The deficit of \$125,098,000 represents the estimated amount that, if fully funded as at June



30, 1995, would allow the program to realize all its assets and discharge all its obligations without any net gain or loss. Because the program intends to maintain LPIC as the insurer, and thus must maintain LPIC's capital, and because the deficit is being funded over four years, the actual amounts that must be funded over that four year period totals approximately \$165,000,000.

These financial statements have been prepared on a going concern basis of accounting which assumes that the Society will continue to eliminate the deficit in the Errors and Omissions Insurance Fund over the four year period; thereby allowing the Society to realize assets and discharge liabilities in the normal course of operations.

Further, the future financial well-being of the program and its continuance could be affected by any significant adverse changes in the frequency or severity of professional liability claims, if such adverse changes were of a magnitude that could not readily be funded by members.

Management of the program believes that the modified insurance program, commenced in late 1994, significantly reduces the potential for such adverse developments occurring.

#### **4. Measurement Uncertainty**

The settlement of professional liability claims involves processes, the outcome of which is inherently uncertain. Consequently, the estimation of the ultimate settlement costs of claims made to date, that underlies the provision for unpaid claims and adjustment expenses, involves measurement uncertainty. Ultimate costs incurred will inevitably vary from current estimates, to some extent.

Further, the nature of the insurance coverage, the risk retention and reinsurance structure and various management practices, including claims handling and settlement practices, were modified, commencing in late 1994, by the new management of the program. These modifications were designed to better control the level and incidence of costs incurred by the program. However, the effects of these modifications cannot be precisely measured so soon after their implementation.

The handling of multiple claims (involving one member of the Society, several claimants and one event giving rise to the claims) is one area where historical practice may have changed. Management has determined that as at June 30, 1995 these claims are appropriately recorded, but that it is not possible to determine what the corresponding balances were at previous reporting dates. The adjustment of prior periods to reflect current information with respect to these claims is not possible. However, this is not expected to give rise to material changes in estimate.

Management, cognizant of the factors noted above, has attempted, working with the actuary, to establish the provision for unpaid claims and adjustment expenses at a realistic but conservative level. It is anticipated that some favourable development in claims costs could emerge. However, at this early stage, management does not believe that the potential for any such favourable development is measurable and consequently, it should not be anticipated in measuring the current financial position of the program.

There is also measurement uncertainty inherent in the estimation of reinsurance recoveries and members deductible recoveries. Management is satisfied that appropriate provisions have been made for potentially unrecoverable amounts and believes that any remaining exposure will prove immaterial to these financial statements.

There is a potential disagreement surrounding an issue of allocation of certain costs of defense and investigation with the reinsurer of the program during the 1982-1989 period. Management believes its own interpretation to be consistent with the contract between the parties as well as established insurance practice and that it has established appropriate reserves for any potential exposure.

#### **5. Restricted Assets**

Included in the combined accounts of the Fund, are approximately \$69.7 million of LPIC assets. These assets are subject to the regulations of the Ontario Insurance Act and are not available to satisfy other obligations of the Fund.

#### **6. A) Comparative Net Claims And Adjustment Expenses**

Net claims and adjustment expenses and the excess of expenses over revenue for the year ended June 30, 1994 were materially impacted by additional provisions that, although recorded during



1994, primarily related to claims originating in prior years. These additional provisions were recorded as a result of a comprehensive study of the insurance program, conducted by the Insurance Task Force of the Society. The additional provisions made in the year ended June 30, 1994, were:

	\$000's
Reassessment of severity of prior years claims	\$37,000
Reduction in prior estimation of future investment income	16,000
Re-estimation of amounts recoverable from third parties	26,000
Provision for future internal costs of settling claims	<u>11,430</u>
	<u>\$90,430</u>

#### **B) Reinsurance Ceded**

To limit losses through the spreading of risks, the Society cedes reinsurance to other insurers.

Net claims and adjustment expenses presented in the statement of revenue and expenses are net of reinsurance ceded in the amounts of \$30,935,000.

In the event that a reinsurer is unable to meet obligations assumed under reinsurance agreements, the Society is liable for such amounts.

#### **C) Provision For Unpaid Claims And Adjustment Expenses**

An analysis of the provision for unpaid claims is as follows:

	1995 \$000's	1994 \$000's
Gross ultimate liability	<u>350,086</u>	348,169
Estimated future amounts recoverable from third parties	<u>(108,529)</u>	(89,826)
	<u>241,557</u>	258,343
Anticipated investment income at a rate of 7% (1994-7.6%)	<u>(25,809)</u>	(35,720)
Provision for unpaid claims and adjustment expenses	<u>215,748</u>	<u>222,623</u>

#### **7. Members' Levies**

Members' levies for the 1994/5 year include base levies of \$4,975 per member plus a \$1,100 per member supplemental levy. Additional levies are charged based on a member's claims history, status, and member filings.

#### **8. Commitments**

LPIC is committed to monthly lease payments under an agreement extending to January 31, 2002. Aggregate lease payments in each of the next five years are \$172,390 and total \$1,134,900 for the remaining term of the lease.

The Society has guaranteed loans totalling \$650,000 (1994-\$590,000). These loans were made prior to 1995 to enable members to finance their deductibles in respect of claims paid by the program.

#### **9. Taxation**

The Errors and Omissions Insurance Fund is not subject to income or capital taxes because it is a fund of a not-for-profit corporation. LPIC is subject to these taxes. Capital taxes of \$32,000 were expensed in the year. The provision of \$5,000,000, recorded in the prior year, reflected potential effects of expected changes in tax legislation. This provision was ultimately not required and has been reversed in the current year.

#### **10. Comparative Financial Statements**

The 1994 comparative amounts were not audited by our current firm of auditors. They were included in the financial statements of the Society which were reported upon by another firm of auditors.

Certain amounts in the comparative financial statements have been reclassified to conform to the presentation used in the 1995 financial statements.



# Convocation Membership

## Changes in the Membership of Convocation

### *Appointments*

Frances Kiteley, LSM appointed to the Ontario Court (General Division) on February 28, 1995

### *New Benchers*

Thomas J.P. Carey was elected bencher on November 24, 1994 to fill vacancy created by the resignation of bencher Fatima Mohideen.

Alan W. Mewett was elected bencher on March 24, 1995 to fill vacancy created by the appointment of Frances Kiteley to the Bench.

Paul Lamek, Q.C. completed his second term as Treasurer on June 23, 1995.

E. Susan Elliott elected Treasurer June 23, 1995 to replace Paul Lamek, Q.C.

Marshall Crowe was elected bencher on June 23, 1995 to fill vacancy created by the election of E. Susan Elliott as Treasurer.

## Benchers of the Law Society of Upper Canada

### **Convocation membership (after 1995 Benchers' Election – May 26, 1995)**

#### *Treasurer*

E. Susan Elliott

#### *Elected Benchers*

Robert B. Aaron  
W. Michael Adams  
Robert P. Armstrong, Q.C.  
Nancy L. Backhouse  
Larry A. Banack  
Denise E. Bellamy  
Gordon Z. Bobesich  
Thomas J.P. Carey  
Kim A. Carpenter-Gunn  
Thomas E. Cole  
Paul D. Copeland  
Eleanore A. Cronk  
Marshall A. Crowe  
Carole Curtis

Jane Harvey  
Professor Vern Krishna, Q.C.  
Joan Lax  
Gavin A. MacKenzie  
Ronald D. Manes  
Frank N. Marrocco, Q.C.  
W.A. Derry Millar  
Daniel J. Murphy, Q.C.  
Ross W. Murray, Q.C.  
Helene B. Puccini  
Heather J. Ross  
Clayton C. Ruby  
Harriet E. Sachs  
David W. Scott, Q.C.

Mary A. Eberts, LSM  
 Philip M. Epstein, Q.C.  
 Abraham Feinstein, Q.C.  
 Neil Finkelstein  
 Gary Lloyd Gottlieb, Q.C.  
 Stephen T. Goudge, Q.C.

Tamara K. Stomp  
 Harvey T. Strosberg, Q.C.  
 Gerald A. Swaye, Q.C.  
 Robert C. Topp  
 Richmond C.E. Wilson, Q.C.  
 Bradley H. Wright

*Appointed Benchers*

Nora Angeles  
 Shirley O'Connor  
 Hope Sealy

*Ex-Officio Benchers*

The Hon. John D. Arnup, Q.C.  
 Robert J. Carter, Q.C.  
 F.M. Cass, Q.C.  
 Ronald W. Cass, Q.C.  
 John T. Clement, Q.C.  
 Austin M. Cooper, Q.C.  
 G.H.T. Farquharson, Q.C.  
 Stanley E. Fennell, Q.C., LSM  
 Patrick G. Furlong, Q.C., LSM  
 Edwin A. Goodman, Q.C.  
 The Hon. Herbert E. Gray, Q.C.  
 The Hon. Howard G. Hampton  
 Charles A. Harnick  
 Robert Kemp-Welch, Q.C.  
 Paul Lamek, Q.C.  
 Donald H.L. Lamont, Q.C., LSM

The Hon. Allan F. Lawrence, P.C., Q.C.  
 Laura L. Legge, Q.C.  
 Samuel Lerner, Q.C.  
 The Hon. G. Arthur Martin, Q.C.  
 Brendan O'Brien, Q.C.  
 P.B.C. Pepper, Q.C., LSM  
 Alan W. Pope, Q.C.  
 J.J. Robinette, Q.C.  
 The Hon. Allan M. Rock, P.C., Q.C.  
 Arthur R.A. Scace, Q.C.  
 Ian G. Scott, Q.C.  
 Nathan Strauss, Q.C., LSM  
 Stuart Thom, Q.C.  
 J. James Wardlaw, Q.C., LSM  
 Roger D. Yachetti, Q.C.  
 H.F. McCulloch, Q.C. (died September 21, 1995)

*Honorary Benchers*

Her Majesty Queen Elizabeth, The Queen Mother  
 His Royal Highness Prince Charles, Prince of Wales  
 The Right Honourable Margaret Thatcher  
 Kenneth P. Jarvis, Q.C., RCA  
 The Honourable Lincoln M. Alexander, Q.C.

**Convocation membership (prior to 1995 Benchers' Election – May 26, 1995)**

*Treasurer*

Paul Lamek, Q.C.

*Elected Benchers*

Thomas G. Bastedo  
 Denise E. Bellamy  
 Ian A. Blue, Q.C.  
 Rino C. Bragagnolo, Q.C.  
 Lloyd Brennan, Q.C.  
 Colin L. Campbell, Q.C.

Joan Lax  
 Samuel Lerner, Q.C.  
 Earl J. Levy, Q.C.  
 Ronald D. Manes  
 Colin D. McKinnon, Q.C.  
 Alan W. Mewett, Q.C.



Thomas J.P. Carey	Marie E.R. Moliner
Robert J. Carter, Q.C.	Daniel J. Murphy, Q.C.
Paul D. Copeland	Ross W. Murray, Q.C.
Maurice C. Cullity, Q.C.	Dennis R. O'Connor, Q.C.
Carole Curtis	K. Julaine Palmer
E. Susan Elliott	Patricia J. Peters, Q.C.
Philip M. Epstein, Q.C.	Clayton C. Ruby
Abraham Feinstein, Q.C.	David W. Scott, Q.C.
Neil Finkelstein	Marc J. Somerville, Q.C.
Stephen T. Goudge, Q.C.	Harvey T. Strosberg, Q.C.
Michael G. Hickey, Q.C.	Robert C. Topp
Kenneth E. Howie, Q.C.	J. James Wardlaw, Q.C.
Professor Vern Krishna, Q.C.	Mary P. Weaver, Q.C.
Donald H.L. Lamont, Q.C., LSM	Roger D. Yachetti, Q.C.

*Appointed Benchers (Prior to May 26, 1995)*

Nora Angeles  
 Netty Graham  
 Shirley O'Connor  
 Hope Sealy

*Ex-Officio Benchers (Prior to May 26, 1995)*

The Hon. John D. Arnup, Q.C.	Laura L. Legge, Q.C.
F.M. Cass, Q.C.	H.F. McCulloch, Q.C.
Ronald W. Cass, Q.C.	The Hon. G. Arthur Martin, Q.C.
John T. Clement, Q.C.	Brendan O'Brien, Q.C.
Austin M. Cooper, Q.C.	P.B.C. Pepper, Q.C., LSM
G.H.T. Farquharson, Q.C.	Alan W. Pope, Q.C.
Stanley E. Fennell, Q.C., LSM	J.J. Robinette, Q.C.
Patrick G. Furlong, Q.C., LSM	Allan M. Rock, Q.C.
Edwin A. Goodman, Q.C.	Arthur R.A. Scace, Q.C.
Howard G. Hampton	Ian G. Scott, Q.C.
Robert Kemp-Welch, Q.C.	Nathan Strauss, Q.C.
The Hon. Allan F. Lawrence, P.C., Q.C.	Stuart Thom, Q.C.

*Honorary Benchers*

Her Majesty Queen Elizabeth, The Queen Mother  
 His Royal Highness Prince Charles, Prince of Wales  
 The Right Honourable Margaret Thatcher  
 Kenneth P. Jarvis, Q.C., RCA  
 The Honourable Lincoln M. Alexander, Q.C.

# Senior Management

*Chief Executive Officer*

SASO, John

947-3308

*Secretary*

TINSLEY, Richard

947-3344

*Deputy Secretary*

ANGEVINE, Margaret

947-3301

*Director, Finance & Administration*

CRACK, David

947-3322

*Chief Librarian*

HOWELL, Glen

947-3397

*Director, Education*

TRELEAVEN, Alan

947-3413

*President, LPIC*

HEINS, Malcolm

598-5801

*Director, Ontario Legal Aid Plan*

HOLDEN, Robert

979-2352 ext. 6501



# Annual General Meeting, 1995

Wednesday, November 8, 1995

Convocation Hall

Osgoode Hall, Toronto

## Order of Business

- Minutes of the previous annual general meeting
- Report of the work of the Society and of the committees of the Society and Convocation
- Presentation of financial statements
- Matters of professional interest that are directly related to the work of the Society
- Motions

## Motions (submitted by members of the profession)

### Motion 1

BE IT RESOLVED that in the event of a policy or directive being implemented by the Law Society to not honour payment of lawyers' outstanding legal aid accounts, either in their entirety or part thereof, that all legal aid panel members who are thereby unpaid in respect of services rendered on certificates set off their annual fees from the Society for the current fiscal year until such policy has been reversed. This in no way derogates from our legal rights to pursue all legal remedies to collect our fees.

### Motion 2

WHEREAS the Ontario Legal Aid Plan (The Plan) is operated by the Law Society of Upper Canada;

AND WHEREAS the plan owes money to thousands of lawyers in Ontario for work that has been completed pursuant to a legal aid certificate;

THEREFORE BE IT RESOLVED that any member of the Law Society of Upper Canada may direct the Law Society to accept as payment of the member's annual premiums and errors and omissions levy monies owing the member from the Plan.

Notes



## Notes

**The Law Society of  
Upper Canada**  
Osgoode Hall  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6